

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members
FROM: Angie Grove, Deputy Legislative Auditor, Performance Audits
CC: Janet R. Kelly, Director, Department of Administration
Dan Bucks, Director, Department of Revenue
DATE: April 2009
RE: Performance Audit Follow-up (09SP-15): Conservation Easements (orig. 06P-01)
ATTACHMENT: Conservation Easements Audit Summary

INTRODUCTION

In January 2007, we presented our performance audit of conservation easements in Montana. The audit contained findings regarding the number and distribution of easements in the state and made three recommendations to improve the easement process—one each to the Department of Revenue and Department of Administration, and a third which suggested that legislation be enacted to ensure public oversight of easements. In December of 2008, we began gathering information on the progress of recommendation implementation. This memo summarizes the results of our follow-up work.

Overview

Audit recommendations focused on standardizing the collection of easement information and improving the dissemination of that information—to include public access to easement information.

The two recommendations made to state agencies are currently being implemented. Information supplied by the agencies indicates full implementation can be expected by the end of 2009. The recommendation to the legislature has been partially implemented.

BACKGROUND

A performance audit of conservation easements in Montana was conducted in response to passage of Senate Joint Resolution 20 during the 2005 Legislative Session. A conservation easement is a voluntary agreement in which a landowner surrenders the right to develop his/her property to an agency or organization dedicated to maintaining natural habitats or open spaces. Audit work addressed the location and characteristics of conservation easements, trends in the creation of easements, procedures for compiling and reporting easement data, property tax implications of easements, direct and indirect public funding for easements, and the need for improvement in public oversight of conservation easements.

FOLLOW-UP AUDIT FINDINGS

Conservation easements continue to be a popular land management tool in Montana. In the two years following the original audit, over 100 new easements were created in the state covering approximately 200,000 additional acres.

Conservation Easement Attribute	2006	2008
Total Acreage	1,573,411	1,809,525
Percentage of State Land Area	1.68%	1.92%
Number of Easements	1,250	1,331

During follow-up work, Legislative Audit Division staff visited five county clerk and recorders to review the conservation easement documents on file at the county level. We then attempted to locate each of those easements in the Department of Administration's Cadastral system. We found that although implementation of our recommendations is not yet complete, the counties, Department of Revenue, and Department of Administration have developed a temporary process to transfer easement information which has resulted in public access (through the Cadastral system) to some information on the majority of new conservation easements.

The following summarizes follow-up audit work and the implementation status of each recommendation.

Recommendation #1

We recommend the Department of Revenue ensure county-level conservation easement data is compiled consistently by:

- A. **Providing guidance on easement data collection to county clerk and recorders through local department staff; and**
- B. **Updating CAMA to include conservation easement attribute fields.**

Implementation Status – Being Implemented

County filing of easement documents appears to have improved since the audit was conducted. During follow-up work we visited the clerk and recorder in five counties with high levels of easement activity. Each county maintained separate files for conservation easements and made the files accessible to the Department of Revenue. Selected counties were: Cascade, Gallatin, Lewis & Clark, Madison, and Teton counties. Sixty-two new easements were found in the county records. Of the 62 new easements we reviewed, we were able to find 45 boundary maps in Cadastral. Of the 17 easements we could not find, 11 were lacking this information due to the recent timing of the transaction; we were unable to locate another six expected to be in Cadastral. The temporary method of information transfer (explained below) has yielded a success rate of approximately 90 percent.

In late 2007, the Department of Revenue launched a new system for tracking property tax information—the system is known as Orion. The new system is capable of capturing data fields related to conservation easements and the Department of Revenue has worked with the Department of Administration to develop a procedure which is designed to ensure easement data becomes part of Orion and Cadastral. At the time of our follow-up, the department was in the process of entering easement data and had set a goal of completing data entry into Orion by July 1, 2009. In the meantime, the Department of Revenue has supplied easement documents it has obtained to the Department of Administration for entry into the

Cadastral mapping system. Anticipated changes with the new Orion system will automate the transfer of information between the agencies and will also ensure the Cadastral system can store and display conservation easement attribute data (acreage, grantor/grantee, and dates).

Recommendation #2

We recommend the Department of Administration develop procedures to allow for the integration of conservation easement data in the Cadastral system.

Implementation Status – Being Implemented

The Department of Administration has completed all of the tasks required of it to implement this audit recommendation except for the actual linking to pertinent Department of Revenue data. For this, the department must await completion of Department of Revenue data entry.

In order to expedite the availability of easement data, Department of Administration personnel have used copies of the agreements to map boundaries and place the information on its Cadastral system. It is currently possible to view some parcels on Cadastral but it is impossible to view the data for those parcels. Once Department of Revenue information is available through an automated exchange, a new version of the Cadastral web application will be developed. The estimated date of implementation is December 2009. In the meantime, the Department of Administration is providing conservation easement data to the Montana Natural Heritage Program, where it is being made available in an online mapping application accessible to the public.

Recommendation #3

We recommend legislation be enacted to ensure conservation easements are subject to public oversight.

Implementation Status – Partially Implemented

Since the audit report was issued, the legislature has taken steps to address the public oversight of conservation easements. In 2007, the Legislature passed Senate Bill 317 which codifies the collection, transfer, and accessibility of easement information and includes a provision that requires easement information be made available on the Department of Administration website. The same legislation also stipulates that easement information be transferred to the Natural Heritage Program for inclusion in its database.

To some extent, this enhanced availability of easement information may provide for sufficient opportunity for public oversight. During the 2009 Legislative Session, several bills were introduced which sought to address easement oversight, though none were passed.